

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

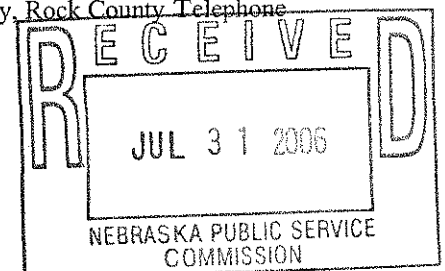
In the Matter of the Nebraska Public)	Application No. NUSF-33 / PI-68
Service Commission, on its own motion,)	
seeking to investigate the audit)	PROGRESSION ORDER NO. 4
requirements related to the Nebraska)	
Universal Service Fund.)	

Reply Comments of The Rural Independent Companies

I. Introduction.

The Rural Independent Companies (the "Companies")¹ respectfully submit these Reply Comments in the docket referenced above. The Companies appreciate the opportunity to respond to Comments submitted pursuant to the May 24, 2006, Progression Order (the "Order") of the Nebraska Public Service Commission (the "Commission"). The Order solicits comments on the Commission Staff's proposal to require that every company contributing to the Nebraska Universal Service Fund ("NUSF") be audited as described in Attachment A to the Order. Comments were filed by United Telephone Company of the West d/b/a Embarq ("Embarq"), the Commission Staff and the Companies.

¹ Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc, Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.



II. The Commission Should Adopt Rules Fully Consistent with the Nebraska Telecommunications Universal Service Fund ("NTUSF") Act.

As noted by Embarq,² the Commission Staff's proposal that the cost of remittance audits for companies with assessable revenues under \$100,000 be paid out the NUSF³ "appears to violate" the provision of the NTUSF Act which states:

The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited;⁴

The Companies agree with Embarq that this proposal is inconsistent with the statutory language. The Companies believe the statute offers the Commission a clear choice between two alternatives; the Commission may either (1) require that a particular company *both* undergo an NUSF remittance audit *and* pay the cost of such audit, or (2) exempt the company from the NUSF remittance audit requirement. The statute does not permit the Commission to have the cost of an NUSF remittance audit to be paid out of the NUSF itself. The cost of each remittance audit must, according to the NTUSF Act, be paid by the company being audited.

Embarq also notes that the NTUSF Act provides the Commission with "significant discretion in deciding which, if any, telecommunications companies should be audited [...]"⁵ citing Nebraska Statute Section 86-324(2)(d) and emphasizing the words "as reasonably necessary" in the sentence directing the Commission to require NUSF remittance audits be performed. The Companies agree with Embarq on this point also, and underscore it by observing the difference in statutory language between the first and second sentences of Section 86-324(2)(d):

² See Application No. NUSF-33, Comments of United Telephone Company of the West d/b/a Embarq ("Embarq Comments"), at p. 4.

³ See Attachment A to Order, para. 3.

⁴ See Neb. Rev. Stat. 86-324(2)(d).

⁵ See Embarq Comments, at p. 2.

- 1) [T]he commission [s]hall require every telecommunications company to contribute ...
- 2) The commission shall require, as reasonably necessary, an annual audit ...

The first sentence provides no discretion in determining which companies must contribute to the NUSF. The second sentence, clearly different, allows the Commission to apply a "reasonably necessary" test to determine which companies must perform an annual NUSF remittance audit. The Companies agree with Embarq's statement that "there is no legal requirement that *all* companies must be audited ..."⁶

III. A "Reasonably Necessary" Standard May Exempt the Smallest Companies from a Remittance Audit Requirement.

The Commission Staff, in its Comments, recommends as follows:

[T]he Commission should wait and receive the cost estimates prior to committing to having the cost of the audit be borne by the NUSF. The Commission should wait and determine that the RFP bids are reasonable and cost effective prior to making the decision to absorb these costs into the fund.⁷

It is unclear what the Commission Staff's recommendation would be in the event the RFP bids are found to be not "reasonable and cost effective." Presumably, the Commission Staff would recommend that the NUSF not pay the cost of such audits, but the Staff does not indicate whether the company should pay the cost of the audit or should be exempted from the audit requirement. In either case, the Companies believe this recommendation demonstrates the Commission Staff's concern with the cost-effectiveness of remittance audits - a concern the Companies,⁸ as well as Embarq,⁹ share.

⁶ See Embarq Comments, at p. 2 (emphasis in original).

⁷ See Application No. NUSF-33, Comments of the Staff of the Nebraska Public Service Commission ("Staff Comments"), at p. 2.

⁸ See Application No. NUSF-33, Comments of the Rural Independent Companies ("The Companies' Comments"), at pp. 5-6.

⁹ See Embarq Comments, at p. 3.

The Companies believe the Commission should give due consideration to the fact that commenting parties have voiced unanimous concern with the cost of remittance audits relative to their benefits.

Despite the apparent statutory requirement on self-payment of remittance audit costs, the Companies believe it would be prudent for the Commission to proceed with the RFP process¹⁰ for the purpose of informing itself of the approximate cost of such remittance audits, in order to set a reasonable revenue threshold amount, such that companies with annual assessable revenue less than the threshold would be exempt from the audit requirement. Companies with assessable revenue between the threshold amount and \$1 million would be subject to the audit requirement, but less frequently than annually. Companies with assessable revenue over \$1 million would continue to be subject to an annual audit requirement.

IV. The Commission Should Adopt a Modified Version of the Commission Staff's New "No Advance Notification" Proposal.

In its Comments, the Commission Staff amends its initial proposal for the mid-sized companies (those required to perform a one-year audit every three years) by recommending that companies "not be notified in advance which year would be audited during any three year period."¹¹ The Commission Staff similarly amends its proposal for the smallest companies (those required to perform a one-year audit every five years): "the Commission should not notify carriers in advance which year is going to be the test period for the audit."¹²

¹⁰ See Attachment A to Order, para. 3.

¹¹ See Staff Comments, at p. 2.

¹² Id.

Under this scenario, a third-party accountant could, for example, be required during 2007 to review a company's 2005 intrastate revenues and NUSF remittances while also reviewing the company's complete 2006 financial records, including interstate and intrastate revenues, in the course of performing a routine annual full company audit. The Companies believe such a scenario involves an inefficient use of resources. The Companies suggest a more efficient procedure would be that companies not be notified in advance of the year during which they will be required to perform a remittance audit, but that, once notified, the remittance audit's study period would be the most recently completed calendar year. Under this procedure, an accountant reviewing the company's complete financial performance for the preceding calendar year would already have access to, and familiarity with, the company's records of assessable intrastate revenue for that year, and could perform the NUSF remittance audit much more efficiently for that year than for a different year. The Companies believe that the gain in efficiency achieved through synchronizing NUSF remittance audits with full company audits in this manner is of greater value in terms of easing regulatory burdens than is the type of predictability offered by the Commission Staff's proposal, in which "the Commission would notify the carrier ahead of time so that companies may be able to plan and budget for the audit."¹³

The Companies propose the following general procedure for scheduling remittance audits and for notifying companies of their duty to perform one.

For mid-sized companies (i.e., those subject to a remittance audit duty every three years):

- In December 2006, the Commission divides the group of mid-sized companies into three subgroups (A, B and C), and notifies each

¹³ See Staff Comments, at p. 2.

company in subgroup A that it is required to have an audit of its 2006 remittances performed during 2007.

- In December 2007, the Commission notifies each company in subgroup B that it is required to have an audit of its 2007 remittances performed during 2008.
- In December 2008, the Commission notifies each company in subgroup C that it is required to have an audit of its 2008 remittances performed during 2009.
- In December 2009, the Commission again divides the group of mid-sized companies into three new subgroups (A, B and C), notifies each company in the new subgroup A that it is required to have an audit of its 2009 remittances performed during 2010, and repeats the steps described above for subgroups B and C in the month of December in subsequent years.

For the smallest companies that are required to perform remittance audits

(i.e., those subject to a remittance audit duty every five years):

- In December 2006, the Commission divides the group of small companies into five subgroups (A, B, C, D and E), and notifies each company in subgroup A that it is required to have an audit of its 2006 remittances performed during 2007.
- In December 2007, the Commission notifies each company in subgroup B that it is required to have an audit of its 2007 remittances performed during 2008.
- In December 2008, the Commission notifies each company in subgroup C that it is required to have an audit of its 2008 remittances performed during 2009.
- In December 2009, the Commission notifies each company in subgroup D that it is required to have an audit of its 2009 remittances performed during 2010.
- In December 2010, the Commission notifies each company in subgroup E that it is required to have an audit of its 2010 remittances performed during 2011.
- In December 2011, the Commission again divides the group of small companies into five new subgroups (A, B, C, D and E), notifies each company in the new subgroup A that it is required to

have an audit of its 2011 remittances performed during 2012, and repeats the steps described above for subgroups B, C, D and E in the month of December in subsequent years.

Mid-sized companies could then plan and budget for remittance audits with the knowledge that they will need to perform an NUSF remittance audit once every three years, on average, without knowing in advance which years they will be required to perform the remittance audits. Similarly, smaller companies whose revenues exceed the minimum threshold (see section III above) could expect to perform remittance audits once every five years, on average.

It may be argued that the above procedure would allow some companies to know in advance when they will be required to perform a remittance audit, and for which year. For example, a mid-sized company in subgroup C can deduce by January, 2008 – through observing that it had not yet received notification from the Commission of an imminent audit duty – that the Commission had placed it in subgroup C, that it will receive such notification in December 2008, and that it will be required to audit its 2008 remittances during 2009. While this is certainly the case, the Companies believe there is very little potential for abuse in such a mechanism. The Companies believe that telecommunications companies have no incentive to alter their internal accounting practices from year to year, depending on whether they will be subject to an NUSF remittance audit. Such manipulation would presumably result in a company's NUSF remittances being higher in the audited years than in other years – a result that is likely to cause the Commission to suspect that the company may be engaging in such manipulation and to reasonably require the company to perform audits for additional years. The Companies believe the remittance audit authority granted to the Commission

by Section 86-324(2)(d) of the NTUSF Act constitutes an effective deterrent against such abuse.

V. Conclusion.

The Companies appreciate the opportunity to present their views on the Comments submitted by other parties in this proceeding. The Companies believe the Commission, in modifying its rules pertaining to NUSF remittance audits, should adhere to the provision of the NTUSF Act requiring the cost of such audits to be paid by the company being audited. The Companies also urge the Commission to exercise the discretion granted it by the NTUSF Act to devise and apply a "reasonably necessary" test that may exempt the smallest companies from the remittance audit requirement. Finally, the Companies recommend that the Commission adopt a procedure for scheduling audits and for notifying companies of their audit duties that both minimizes the time interval between the audit study period and the performance of the audit, and minimizes the advance notice given to companies of the timing of their required audits.

DATED: July 31, 2006.

Respectfully submitted,
THE RURAL INDEPENDENT
COMPANIES:

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,

Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Co.,
K & M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 2006, the original and five (5) paper copies, together with an electronic copy, of the foregoing **Reply Comments of the Rural Independent Companies** were served upon Andy S. Pollock, Executive Director of the Commission, by hand-delivery.


James A. Overcash